BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort	Rulemaking 21-03-011 (Filed March 18, 2021)

POST WORKSHOP COMMENTS OF SAN DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE

Ty Tosdal
Tosdal APC
845 15th Street, Suite 103
San Diego, CA 92037
(858) 252-6416
ty@tosdalapc.com

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Attorney for San Diego Community Power and Clean Energy Alliance

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I. INTRODUCTION

San Diego Community Power ("SDCP") and Clean Energy Alliance ("CEA") submit these comments in response to the Administrative Law Judge's ("ALJ") Ruling ("ALJ Ruling") instructing parties to respond to questions on Phase 1 of this proceeding regarding the Provider of Last Resort ("POLR").[1] The comments address Energy Division's proposed framework and financial monitoring of Community Choice Aggregation ("CCA") programs.

II. DISCUSSION

Section 3 of the ALJ Ruling lists specific questions for party comments.[2] The discussion below tracks the conventions of the ALJ Ruling and uses the identical heading numbers. SDCP and CEA address questions in Section 3.1 on the Energy Division's proposed framework and Section 3.5 on risk management and financial management, but do not address questions contained in other sections of the ALJ Ruling. With respect to those questions, SDCP and CEA join and support the comments of their trade association, the California Community Choice Association ("CalCCA"), that are being filed in this proceeding today.

[1] *Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments* ("ALJ Ruling"), Rulemaking ("R.") 21-03-011, February 24, 2022.
[2] ALJ Ruling at 2.

3.1 PROPOSED POLR FRAMEWORK

Energy Division will present a proposed framework for Phase I of the POLR proceeding, attached to the workshop agenda.

a. Does Energy Division's proposed framework accurately capture the core problem statement and set of issues that need to be addressed in Phase 1? If not, what needs to be changed or considered?

The proposed framework is a valuable starting point for analyzing various aspects of POLR and developing rules, but it should be modified and supplemented to reflect several additional considerations.[3] Foremost, the framework omits consideration of downstream impacts on LSEs. While consideration of impacts may have been intended, without any such consideration, the rules that are ultimately adopted may heighten – rather than mitigate – the risk of a mass involuntary return of customers to POLR. Financial obligations emanating from a liquidity pool contribution requirement or Financial Security Requirements ("FSRs") adopted in this proceeding, for example, may be good solutions for POLR, but those same rules may be material and highly volatile for LSEs, creating persistent financial risks that are difficult and potentially impossible to manage. In addition, the proposed framework advances the premise that LSE failure is most likely to occur during a capacity shortfall. That is not to suggest a capacity shortfall is the only circumstance that the Commission is examining, but an LSE failure is likely to be complex and specific to the LSE. Giving capacity too much weight may artificially constrain policy options. Finally, greater clarity is needed around the applicability of the Continuity of Service Plan and Risk Management Plan.

The proposed framework should be modified to explicitly include consideration of policy impacts on LSEs. For example, a long duration POLR service with a substantial procurement

[3] *See* ALJ Ruling, ATTACHMENT: Energy Division Staff Proposed Phase 1 POLR Framework.

cost component that is tied to volatile resource pricing, for example, could result in an ongoing financial obligation to LSEs that is both material and unpredictable. Whether that obligation comes in the form of mandatory contributions to a liquidity pool or FSRs, both of which are under consideration in this phase of the proceeding, the magnitude and nature of that financial obligation on contributing LSEs needs to be quantified, analyzed and considered carefully as the rules are adopted. Other policy measures under review, such as changes to contract requirements, may also have far-reaching consequences to LSE procurement practices, require numerous contracts to be renegotiated, and substantially raise costs. Failing to consider these impacts could result in a set of rules that solves problems for the IOUs, and at the same time, *substantially increases* the risk that an LSE will fail. Failure of an LSE due to the financial pressures of POLR rules would be entirely counterproductive to the exercise that the Commission has undertaken in this proceeding and contribute to an unnecessary disruption in service providers among other negative impacts.

Omission of LSE impacts in the framework may be a function of how the proceeding is scoped, with Phase I being reserved for issues related to IOUs serving in the POLR role and Phase II addressing other LSEs operating in that role.[4] Regardless, the impact of rules being designed for IOUs serving in the POLR role must be considered now in Phase I, while the rules are being developed, and not later, when they have already been adopted and must be followed. For these reasons, the framework should be amended to explicitly include consideration of downstream impacts on LSEs.

In addition, the proposed framework advances the premise that LSE failure is most likely to occur during a capacity shortfall.[5] SDCP and CEA agree that a capacity shortfall may be a

[4] Assigned Commissioner's Scoping Memo and Ruling, R. 21-03-011, September 16, 2021, at 3-4.
[5] ALJ Ruling, ATTACHMENT: Energy Division Staff Proposed Phase 1 POLR Framework at 4.

present during and serve as a contributing factor to an LSE failure. At the same time, LSE failure will most likely be complex, involving a number of factors, and be specific to the LSE. Giving capacity too much weight will constrain policy options that may be viable solutions to the problems at hand. The language regarding the conditions under which LSEs are likely to fail should be modified accordingly.

Finally, Energy Division proposes to adopt a Continuity of Service Plan and Risk Management Plan, but the applicability of these plans remains unclear.[6] Specifically, it is not apparent from the proposed framework whether these plans are high level policy documents intended to guide the Commission through a mass return of customers to POLR, or whether they are specific plans that individual LSEs will be asked to prepare, submit and follow, or something else entirely. To the extent that these plans are designed for individual LSEs, SDCP and CEA object to their inclusion, as such plans are unnecessary and duplicative of existing and future POLR rules.

To summarize, the framework should be amended to include the following:

- Explicit consideration of how proposed rules will impact LSEs;
- Modified language regarding the conditions under which LSEs are likely to fail; and
- Further elaboration regarding the Continuity of Service Plan and Risk Management Plan as they relate to applicability.

3.2 DEFINITION OF POLR SERVICE

Please see CalCCA comments.

3.3 POLR LIQUIDITY NEEDS

Please see CalCCA comments.

[6] *Ibid.*

3.4 RESOURCE AVAILABILITY

Please see CalCCA comments.

3.5. RISK MANAGEMENT AND FINANCIAL MONITORING

a. Parties provided a variety of recommendations to monitor the financial status of Community Choice Aggregators (CCAs.) The following questions are provided to further explore these recommendations.

SDCP and CEA recognize that the Commission has a valid interest in CCA program finances at the present time, given the return of customers from Western Community Energy and Baldwin Park, and that an important purpose behind the idea of monitoring CCA program finances is obtaining advance warning of an LSE failure. There is benefit to aggregating financial statements and reports that are already regularly prepared by CCA programs in order to provide greater visibility into their financial health. Monthly financial statements, for example, provide a window to CCA program finances and can be analyzed to provide the Commission with advance warning of LSE failure. SDCP and CEA are currently working with CalCCA to develop a repository for CCA financial reports, risk management policies and related information, that can be accessed for the purpose of financial analysis.

At the same time, SDCP and CEA have serious concerns that the Commission is planning to enter into financial regulation of CCA programs. Adopting substantive risk management rules or mandatory financial reporting rules risks duplication of effort and unnecessary conflict with existing financial oversight required under the Joint Exercise of Powers Act ("JPA Act")[7] and other state laws. These laws put the governing boards of CCA programs in charge of making financial decisions and require them to adhere to established accounting practices.

[7] Gov't Code § 6500 *et seq*.

It bears remembering that the vast majority of communities participating in CCA programs are members of Joint Powers Authorities ("JPAs"), and that JPAs are legally required to account for funds, conduct financial reporting, maintain internal controls and submit to regular audits. Most communities participating in CCA programs do so through a JPA: 170 of the 182 cities and counties participating in a CCA program in 2020 were members of a JPA.[8] Since then, the number of cities and counties acting as members of JPAs has only increased due to new and expanding CCA programs.

The JPA Act requires JPAs to do the following:

- Account for all funds, including revenue and expenses;
- Maintain accounting records; and
- Undertake quarterly financial reporting. [9]

The JPA Act also requires internal controls and strictly limits investments, further minimizing risk.[10] Finally, the JPA Act requires that an annual audit be performed by a certified public accountant or public accountant.[11] The audit must conform to Generally Accepted Accounting Principles ("GAAP") and the audit report is by law a public record.[12] Cities in California must operate under similar rules and are required to prepare audited financial statements that conform to GAAP, among other things.[13]

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[8] See, K. Trumbull, J. Gattaciecca, and J.R. DeShazo, *The Role of Community Choice Aggregators in Advancing Clean Energy Transitions: Lessons from California*, University of California Los Angeles Luskin Center for Innovation, October 2020, at 22.

[9] Gov't Code § 6500 *et seq*.

[10] Gov't Code § 6505.5; 6509.5; 53601.

[11] Gov't Code § 6505(b).

[12] Gov't Code § 6505(b), (c).

[13] Gov't Code §§ 53890 – 53897.

Governing boards of CCA programs make financial decisions and conduct financial oversight using these established rules and practices.[14] New rules adopted by the Commission may be problematic to the extent that they conflict with existing law establishing governance and accounting practices of CCA programs. Even if problems related to duplicative and potentially conflicting financial oversight could be resolved, the Commission lacks jurisdiction and legal authority for conducting financial regulation of CCA programs. There is no statute that authorizes the Commission to regulate the finances of CCA programs; Senate Bill ("SB") 520 provides no expanded jurisdiction or legal basis. As the law stands today, financial oversight is reserved for CCA governing boards.

b. The IOUs, CalCCA, and Cal Advocates propose that financial monitoring of CCAs could help identify CCAs with financial problems, facilitating an early response to those problems to help maintain market stability.

- **What benefits would such monitoring provide?**

Financial monitoring could provide advance warning of an LSE failure. Depending on the type and nature of monitoring, advance warning could be useful for the Commission and POLR in preparation for returning customers.

- **What kinds of financial information should CCAs report?**

Given the legal framework, CCA programs can provide monthly or quarterly financial statements that include:

- A balance sheet that reports the organization's assets, liabilities and reserves;
- An income statement that reports the organization's revenue, expenses and net or excess revenue over the period; and
- A cash flow statement that reports the organization's cash flow, including activities such as investing and financing.

[14] Gov't Code § 6508.

CCA programs can also provide risk management and related policies governing financial practices.

- **Should reports be limited to publicly available information, or should additional confidential reports containing confidential information be provided?**

Financial reporting should be limited to publicly available information, which includes monthly financial statements that typically include a balance sheet, income statement and cash flow statement. Financial statements provide a substantial amount of data and other information relevant to the financial condition of CCA programs and are the same source documents that are traditionally analyzed by financial analysts to gain a picture of an entity's financial condition. Monthly financial statements are more than adequate to provide advance warning of serious financial problems that may lead to LSE failure.

Up to now, the Commission has not reviewed CCA program financial statements systematically. The Commission may find that review of financial statements is sufficient for its purposes, but should they prove to be inadequate for some reason, the issue can be revisited in the future, and the Commission can look to additional sources of information.

- **How should the financial reporting be utilized?**

Financial reports should be reviewed for the purpose of obtaining advance warning of an LSE failure, which may be useful for the Commission and POLR in preparation for returning customers, depending on the timing and contents of the warning. To be effective, however, monitoring must be conducted by qualified personnel who are trained and have experience in local government finance. CCA programs are after all local government entities that follow accounting practices that differ greatly from accounting at larger public institutions like agencies or states, and also differ from for-profit entities like the Investor-Owned Utilities ("IOUs"). Monitoring must also be conducted regularly in order to be useful for the purpose at hand; data

that goes unseen does nothing to warn. Additional staff and training may be necessary in order to effectively monitor the finances of over 20 operational CCA programs each month.

c. UCAN argues that some sort of regular and/or trigger-induced financial reporting should be required from LSEs to monitor potential failure.

- **Should reporting requirements be established based on specific triggers, and if so, what triggers?**

Financial reporting should serve the purpose of providing advance warning of an LSE failure. To that end, financial reporting should be based on blanket requirements rather than specific triggers. It is unclear what value additional reporting would provide.

d. CalCCA proposes that the financial reporting requirements should occur through upgraded requirements to the implementation plans.

- **What if any critical financial or other standards should a CCA be required to meet during the Implementation Phase, as a condition of receiving approval to begin serving customers?**

- **Would financial reporting requirements in implementation plans be established for the Implementation Phase of new CCAs only, or for all CCAs?**

Enhanced disclosure requirements for implementation plans may provide some visibility into CCA program finances at a critical stage of operations, namely, the nascent stage of the program, but the Commission should not create a means test for new CCA programs because it would have the unintended consequence of arresting the development of new CCA programs.

While financial disclosures may be useful in monitoring the finances of CCA programs, that objective must be balanced against the goals of cities and counties that intend to form a CCA program in the first instance under the law that authorizes them to do so,[15] should they choose. A means test fails to strike the right balance because it would frustrate the legal rights of customers

[15] Pub. Util. Code § 366.2.

whose cities and counties that have decided to form a CCA program and have followed the legal steps to establish one.

Furthermore, a means test does not entirely serve the Commission's purpose in this proceeding, i.e., to monitor CCA program finances. Like many other LSEs, CCA programs rely on retail sales as a major source of revenue, and power purchases are a major driver of expenses. Establishing prerequisites, such as asset, revenue or reserve requirements, for example, before any revenue is generated or power is purchased does not serve to monitor financial health of a CCA program on an ongoing basis; it only establishes the price of admission. Adoption of a means test for CCA programs falls outside the scope of this proceeding.

III. CONCLUSION

SDCP and CEA appreciate the Commission taking these comments and recommendations into consideration and look forward to further discussion.

Respectfully submitted,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC
845 15th Street, Suite 103
San Diego, CA 92037
(858) 252-6416
ty@tosdalapc.com

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